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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/642,250	08/15/2003	Keith William Hutcheon	188472 (8830-220)	1546
23973	7590	06/14/2005	EXAMINER	
DRINKER BIDDLE & REATH ATTN: INTELLECTUAL PROPERTY GROUP ONE LOGAN SQUARE 18TH AND CHERRY STREETS PHILADELPHIA, PA 19103-6996			HALE, GLORIA M	
			ART UNIT	PAPER NUMBER
			3765	
DATE MAILED: 06/14/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/642,250

Applicant(s)

HUTCHEON ET AL.

Examiner

Gloria Hale

Art Unit

3765

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 March 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-4 and 6-24 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4 and 6-24 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 21 March 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-4 and 6-24 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

It is not clear as to how the cover is “deformable” to protect the valve from an external force since the valve is just formed of fabric and would not protect the valve from a hard force. The tubular shape appears to remain when the cover is “deformed” The present claims do not adequately claim the structure of the invention in that the connection to the immersion suit about the covers perimeter has not been claimed. The actual function performed upon an external force is actually a movement of the head to fold over and cover the “cover” opening and cover the valve openings. The present claims are too broad and only claim any tubular cover which can have an intended use of covering an immersion suit valve. The permanent connection with the immersion suit has not been claimed. Any frusto-conical fabric structure meets the applicants claim limitations.

The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: The claim limitations of “maximum transverse dimension”

and wherein the "first shape defines a bore" as claimed in claims 6 and 24 have not been included in the specification.

The use of the trademark GORETEX has been noted in this application. The tradename has now been capitalized. However, the generic terminology of polytetrafluoroethylene(PTFE) has not been included.

Although the use of trademarks is permissible in patent applications, the proprietary nature of the marks should be respected and every effort made to prevent their use in any manner which might adversely affect their validity as trademarks.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-4 and 6-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gould (5,088,116) in view of Long et al (US 4,274,759).

Gould discloses a deformable tubular cover that can have a first shape and a second, flattened shape upon an external force. The cover of Gould is to be worn over any garment to protect from elements and is a waterproof/water resistant GORETEX material. However, the suit with the valve has not been disclosed. Long et al discloses an immersion suit with a valve in the lower leg area. When the gaiter portion is worn over the valve in the leg area of Long et al

the valve is protected as claimed. When a immersion suit is worn and a wearer is in need of more protection while waiting in the water to prevent the incursion of water the gaiter of Gould provides the needed protection. The Gould tubular gaiter portion 46 includes a base end and a head end as claimed with a connecting (middle portion) that is GORETEX and resists fluid flow there through from the sides and the head and base ends allow fluid through their open ends. The transverse dimensions of Gould are as claimed and as seen in figures 9 where the bottom is wider than the head end thereby forming a tubular tapered frusto-conical shape. When the sides are flattened the cross-section is polygonal as broadly claimed. The head is substantially circular when about the wearer's leg. The head end includes a mechanism, tabs 43. The structure can be formed of many panels as desired since it is known in garment manufacturing to construct garments of multiple pattern pieces to achieve a contoured shape and to conserve fabric by piecing a garment together. The gaiter of Gould covers the valve on the immersion suit of Long et al as claimed. The specific structure of the cover of the present invention should be claimed. The present functional language and intended use language does not differentiate over the prior art or other type of known covers that can be used to cover the valve. The present intended use statement does not differentiate the limited structural language of the claim over other prior art frusto-conical fabric covers.

Response to Arguments

Applicant's arguments with respect to claims 1-4 and 6-23 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gloria Hale whose telephone number is 571-272-4984. The examiner can normally be reached on Tues.-Friday.

The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Gloria Hale
Primary Examiner
Art Unit 3765
